

DETAILED ACTION

In light of the new grounds of rejection set forth below, the following action is non-final.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims 1-9 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Claims 1 and 6 both recite "a deodorizing effective amount of a composition that consists of an ascorbic acid analog". While there is support in the specification to recite that the ascorbic acid analog is present in an amount of 0.01-3% or in an amount of 0.05-1%, there is no support to recite that a "composition consisting of" ascorbic acid analog is present in "deodorizing effective amount" as presently claimed.

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. Regarding claims 1 and 6, the claims recite “adding a deodorizing effective amount of a composition” and “treatment at a high temperature under elevated pressure”. Both of these statements are infinite since they do not give a specific amount or a specific temperature or pressure. It is not clear what is meant by "effective" or what would be considered effective. Also, “a deodorizing effective amount of a composition that consists of an ascorbic acid analog in the production of a food material obtainable by subjecting a protein material” is unclear. What is being obtained? Is the ascorbic acid produced by subjecting a protein material and an optional secondary material to a high temperature and elevated pressure?

6. Regarding claims 4 and 6-9, it is not clear what is meant by “fibrous texture”.

7. The terms “high temperature” and “elevated pressure” in claim 1, 3, 4, 6, and 8, are relative term which renders the claim indefinite. The terms “high” and “elevated” are not defined by the claim, the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably apprised of the scope of the invention. It fails to give a distinct temperature and pressure.

Claim Rejections - 35 USC § 102

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Hamai et al. JP 2941416.

Hamai et al. discloses a method for deodorizing unpleasant smells, caused by hydrogen sulfide (machine translation page 2, line 8), in fish, by treating the fish with high temperature under elevated pressure, with an extruder (machine translation page 3, lines 15-17) and an oxidizing agent, of which ascorbic acid is listed (machine translation page 4, line 2). Although there is no explicit disclosure in Hamai that the fish has a fibrous texture, given that the fish is produced using an extruder, which is identical to the way the fish is produced in the present invention, it is clear that the fish of Hamai would inherently possess fibrous texture. Hamai also teaches the addition of "auxiliary materials" and seasonings to the fish product (machine translation page 3, line 6) before the fish material is treated by the extruder. After the fish material is treated by ascorbic acid, secondary materials, and extruder, it is frozen (machine translation page 3, last paragraph and page 4, line 10). Given that the method deodorizes unpleasant smells caused by hydrogen sulfide, it is clear that the ascorbic acid is present in a deodorizing effective amount as presently claimed.

10. Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being anticipated by Madono et al. JP 10-042841.

Madono et al. discloses adding vitamin C (L-ascorbic acid or its salt) to vegetables to control the sulfurous odor ([0006-0008 and 0015]). The process beats and heat-treats the vegetables then adds a deodorizing about of vitamin C. The reference does not explicitly disclose pressure treatment; however it is inherent that beating the product will produce "elevated pressure". Given that the method deodorizes unpleasant smells caused by hydrogen sulfide, it is clear that the ascorbic acid is present in a deodorizing effective amount as presently claimed.

Response to Arguments

11. In response to Applicants reply filed on August 13, 2009, specifically to,

Japanese Patent 2941416B2 does not teach or suggest the step of “adding a composition that consists of an ascorbic acid analog” because Japanese Patent 2941416B2 does not even suggest any ascorbic acid analog. (Page 7, last paragraph)

JP 2941416 teaches using reducing agents, such as oxidizing agents, such as ascorbic acid, to control hydrogen sulfide. Although “ascorbic acid analog” is not explicitly stated, ascorbic acid is an ascorbic acid analog, as set forth in instant invention.

12. The remainder of applicants’ arguments are moot in light of the new grounds of rejections set forth above.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to LELA S. WILLIAMS whose telephone number is (571)270-1126. The examiner can normally be reached on Monday to Thursday from 7:30am-5pm (EST).

If attempts to reach the examiner by telephone are unsuccessful, the examiner’s supervisor, Callie Shosho can be reached on 571-272-1123. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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